UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,480	09/30/2003	Mo-Han Fong	0583P57US01	1538

26123   7590   11/27/2009
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ART UNIT	PAPER NUMBER
2617	

NOTIFICATION DATE	DELIVERY MODE
11/27/2009	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte MO-HAN FONG and ALL IRAQI,

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Appeal 2009-003231
Application 10/673,480
Technology Center 2600

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Decided: November 24, 2009

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Before ROBERT E. NAPPI, MARC S. HOFF and
KARL D. EASTHOM, *Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1-11 and 15-20.[1] We have jurisdiction under 35 U.S.C. § 6(b).

We reverse the Examiner's rejections of these claims.

INVENTION

The invention is directed to a system and method of controlling voice and data traffic on a single carrier by maintaining no greater than a maximum defined load. *See* Spec: 6-7. Claim 1 is representative of the invention and reproduced below:

> 1. A method of balancing voice and data traffic in a wireless communications network, said method comprising the steps of:
> establishing a maximum load value for at least one of a voice or data traffic on a carrier; and maintaining loading on said carrier at a level no greater than said established maximum load value by converting said carrier from voice and data traffic to voice-only traffic upon exceeding said established maximum load value;
> wherein said established maximum load value is a threshold defined to ensure acceptable quality of communications.

REFERENCES

Brody	US 4,670,899	Jun. 2, 1987
Zdunek	US 4,870,408	Sep. 26, 1989
Kotzin	US 5,796,722	Aug. 18, 1998

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[1] Claims 12-14 were indicated as containing allowable subject matter in the Non-Final Rejection, mailed August 10, 2005.

| Ayyagari | US 6,278,701 B1 | Aug. 21, 2001 |
| Salonaho | US 6,594,495 B2 | Jul. 15, 2003 |

REJECTIONS AT ISSUE

Claims 1, 3, 4, and 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Zdunek. Ans. 3-7.

Claims 2 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zdunek in view of Brody. Ans. 8-10.

Claims 5, 9, and 15-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zdunek in view of Kotzin. Ans. 10-14.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Zdunek in view of Ayyagari. Ans. 14-15.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zdunek in view of Salonaho. Ans. 15-17.

ISSUE

Rejection of claims 1, 3, 4, and 10 under 35 U.S.C. § 102(b) as being anticipated by Zdunek

Appellants argue on pages 7-11 of the Appeal Brief that the Examiner's rejection of claim 1 is in error. Appellants argue that Zdunek does not disclose converting a carrier from voice and data traffic to voice-only traffic as required by claim 1. App. Br. 7. Appellants present similar arguments directed to independent claims 4 and 10 and dependent claim 3 on pages 10-11 of the Appeal Brief.

Thus, with respect to independent claims 1, 4, and 10 and dependent claim 3, Appellants' contentions present us with the issue: Have Appellants shown that the Examiner erred in finding that Zdunek teaches converting a carrier from voice and data traffic to voice-only traffic?

Rejection of claims 2, 5-9, 11, and 15-20 under 35 U.S.C. § 103(a)

Appellants argue on pages 11-14 of the Appeal Brief that the Examiner's rejection of dependent claims 2, 5-9, 11, and 15-20 is in error. Claims 2, 5-9, 11, and 15-20 are dependent upon claims 1, 4, and 10 and contain similar limitations to claims 1, 4, and 10. Appellant presents the same issues with respect to claims 1, 4, and 10. App. Br. 11-14. Thus, Appellants' arguments with respect to the Examiner's rejection of claims 2, 5-11, and 15-20 present us with the same issue as claims 1, 4, and 10.

FINDINGS OF FACT

Zdunek

1. Zdunek discloses a communications system that tranceives both data and voice from a number of subscribers, including: voice-only subscribers, data only subscribers, and voice/data subscribers. Col. 1, ll. 7-9 and col. 4, ll. 33-35.

2. A particular number of data channels are assigned as data or voice channels. A central monitor monitors the voice activity while a network controller monitors data activity. Col. 5, ll. 26-29.

3. If data activity has exceeded a threshold, the network controller requests a voice channel be reallocated to a data channel. If voice activity has exceeded a threshold, the central requests a data

channel be reallocated to a voice channel. Col. 5, ll. 34-41 and col. 8, ll. 9-42.

PRINCIPLES OF LAW

Office personnel must rely on Appellant's disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). "[I]nterpreting what is *meant* by a word *in* a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.'" *In re Cruciferous Sprout Litigation,* 301 F.3d 1343, 1348 (Fed. Cir. 2002) (internal quotation marks and citations omitted; emphasis in original).

ANALYSIS

Rejection of claims 1, 3, 4, and 10 under 35 U.S.C. § 102(b) as being anticipated by Zdunek

Appellants' arguments have persuaded us that the Examiner erred in rejecting claim 1. Independent claim 1 recites "converting said carrier from voice and data traffic to voice-only traffic upon exceeding said established maximum load value." Independent claims 4 and 10 recite similar limitations. Appellants first argue that Zdunek does not disclose a carrier containing both voice and data traffic. App. Br. 8. Additionally, Appellants argue that Zdunek does not disclose converting a carrier from voice and data traffic to voice-only traffic. App. Br. 8. We agree.

Zdunek discloses a method wherein if a communications system contains high voice activity a decision is made as to whether a data channel can be changed to a voice channel. FF 3. Additionally, if the

communications system contains high data activity a decision is made as to whether a voice channel can be changed to a data channel. FF 3. In both situations, the voice activity and the data activity are on separate channels. The Examiner has not identified any teaching, nor do we find any teaching in the reference, that discloses that a carrier can contain both voice and data activity at the same time. Therefore, we will not sustain the Examiner's rejection of claims 1, 3, 4, and 10.

Rejection of claims 2, 5-9, 11, and 15-20 under 35 U.S.C. § 103(a)

Appellants' arguments have persuaded us of error in the Examiner's rejection of claims 2, 5-9, 11, and 15-20. Claims 2, 15, and 16 ultimately depend upon claim 1; claims 5-9 and 17-18 ultimately depend upon claim 4; and claims 11 and 19-20 ultimately depend upon claim 10. Appellants' arguments that the rejection of these claims is in error for the reasons discussed *supra* with respect to claims 1, 4, and 10 is persuasive for the reasons discussed *supra* with respect to claims 1, 4, and 10. The Examiner has not found that the additional teachings of Brody, Kotzin, Ayyagari, or Salonaho make up for above noted the deficiency noted in the rejection of claims 1, 4, and 10. Therefore, we will not sustain the Examiner's rejection of claims 2, 5-9, 11, and 15-20.

CONCLUSIONS OF LAW

Appellants have shown that the Examiner erred in finding Zdunek teaches converting a carrier from voice and data traffic to voice-only traffic.

SUMMARY

The Examiner's rejection of claims 1-11 and 15-20 is reversed.

<u>REVERSED</u>

ELD

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